**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 8803 OF 2005**

Smt.Kamal Jagannath Chavan ...Petitioner
V/s.
Ram Narayan Sarate & Anr. ...Respondents

Shri G.N. Salunke for the Petitioner.

**CORAM : V.M. KANADE, J.**

**DATED : MARCH 12, 2007**

**P.C. :-**

1. Heard the learned Counsel for the petitioner. None appears on behalf of the respondents though they are served. The notice which was issued specifically stated that the writ petition would be decided at the admission stage.

2. The petitioner is challenging the order passed by the District Court, Satara, whereby the application filed by the petitioner for condonation of delay was rejected. The learned Counsel for the petitioner has invited my attention to the impugned order. He submitted that the delay was caused as the petitioner had filed an application under Order IX Rule 13 of the CPC challenging the exparte order which was passed by

the trial Court. The petitioner contended before the District court that in view of the application which was under Order IX Rule 13, the delay was caused in approaching the District Court. He also contended that the petitioner was suffering from various diseases and was medically unfit. The District Court did not accept the explanation which was offered by the petitioner.

3. In my view, sufficient cause has been given by the petitioner. It is not being disputed that the medical certificate was in fact produced by the applicant. The District Court questioned the genuineness of the medical certificate. Further, it held that the remedy which was initially adopted by the applicant under Order IX Rule 13 of the CPC was correct and therefore, there was no question of granting exemption of the time which was consumed in pursuing the said remedy. In my view, the District Court clearly erred on both these counts. The petitioner is a lady is doing household work and it is obvious that she must be guided by the legal adviser but because incorrect legal advice to her, that cannot be a ground for not accepting

the explanation which was given by her. The Court ought to have taken into consideration the fact that sufficient explanation was offered. What is important is to find out whether the petitioner is diligent or not. In my view, sufficient cause has been given by the petitioner.

4. The impugned order dated 18th November, 2004 passed by the District Judge, Satara, is set aside. The Misc.Application for condonation of delay is allowed. Delay is condoned.

4. The District Court is directed to decide the appeal on merits and in accordance with law, as expeditiously as possible and in any case, within a period three months.

. Writ Petition is allowed in the above terms.

**(V.M. Kanade, J.)**